

6.13 FLOODPLAIN DISTRICT ZONING REGULATION

(Added 4/30/85 ATM, Art. 56. Amended 4/28/14, Art. 45.)

6.13.1 Floodplain District - The Floodplain District is herein established as an overlay district.

The purpose of the Floodplain Overlay District is to:

- 1) Ensure public safety through reducing the threats to life and personal injury;
- 2) Eliminate new hazards to emergency response officials;
- 3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- 4) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- 5) Eliminate costs associated with the response and cleanup of flooding conditions;
- 6) Reduce damage to public and private property resulting from flooding waters; and
- 7) Adaptation to climate change to satisfy the public interest and natural floodplain functions.

The District includes all special flood hazard areas within the Town of Wellfleet designated as Zone A, AE, AO, AH or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program dated July 16, 2014. These maps indicate the 1%-chance regulatory floodplain. The exact boundaries of the District may be defined by the 1% chance base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Building Commissioner and the Conservation Commission. The underlying permitted uses are allowed, provided they meet the following additional requirements, as well as those of the Massachusetts State Building Code dealing with construction within Floodplain (780 CMR).

6.13.2 Definitions

DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

FLOODWAY. The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202]

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

HISTORIC STRUCTURE means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior or
 - (2) Directly by the Secretary of the Interior in states without approved programs.
- [US Code of Federal Regulations, Title 44, Part 59]

NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. *New construction includes work determined to be substantial improvement.* [Referenced Standard ASCE 24-14]

RECREATIONAL VEHICLE means a vehicle which is:

- (a) Built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) Designed to be self-propelled or permanently towable by a light duty truck; and
 - (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- [US Code of Federal Regulations, Title 44, Part 59]

REGULATORY FLOODWAY - see **FLOODWAY**.

SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202]

START OF CONSTRUCTION. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

VARIANCE means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

6.13.3 Abrogation

The floodplain management provisions found in this Floodplain Overlay District Bylaw shall take precedence over and shall supersede any less restrictive, conflicting local bylaws, codes or regulations of the Town of Wellfleet.

6.13.4 Degree of Protection

The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.

6.13.5 Severability

The degree of flood protection required by this Floodplain Overlay District Bylaw is based on reasonable scientific and engineering considerations but does not imply total flood protection. This Bylaw shall not create liability on the part of the Town of Wellfleet or any officer or employee thereof for any flood damage that may result from reliance on the provisions hereof, or from any administrative decision made hereunder.

6.13.6 Designation of community Floodplain Administrator

The Town of Wellfleet hereby designates the position of Building Commissioner to be the official floodplain administrator for the Town

6.13.7 The Town of Wellfleet requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

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6.13.8 Wellfleet's permit review process includes the use of a checklist of all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must submit the completed checklist demonstrating that all necessary permits have been acquired.

6.13.9 Requirement to submit new technical data

If the Town/City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town/City will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s). Notification shall be submitted to:

FEMA Region I Risk Analysis Branch Chief
99 High St., 6th floor, Boston, MA 02110

And copy of notification to:

Massachusetts NFIP State Coordinator
MA Dept. of Conservation & Recreation, 251 Causeway Street, Boston, MA 02114

6.13.10 In a riverine situation, the Floodplain Administrator shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities, especially upstream and downstream
- Bordering States, if affected
- NFIP State Coordinator

Massachusetts Department of Conservation and Recreation

251 Causeway Street, 8th floor, Boston, MA 02114
• NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor, Boston, MA 02110

6.14 SPECIAL FLOOD HAZARD REGULATIONS

(Added 4/30/85 ATM, Art. 57. Amended 4/28/14, Art. 45.)

In special flood hazard areas subject to high wave impact and/or severe flood inundation (Zone A, AE, AO, AH, and/or VE) of the Barnstable County Flood Insurance Rate Map (FIRM) for the Town of Wellfleet dated July 16, 2014 and in accordance with any revisions or issuance, no new building shall be erected or constructed and no new subsurface disposal system installed except as authorized or required by the Board of Health; no paving; no existing structure shall be enlarged; no structure shall be moved except as landward of the reach of mean high tide; no dumping; no filling or earth transfer shall be permitted except as authorized by the Conservation Commission; and there shall be no additional mobile homes. Amended 5/5/87 ATM, Art. 73)

6.14.1 Within special flood hazard areas the following uses are permitted:

- 6.14.1.1 Conservation of water courses, plants and wildlife.
- 6.14.1.2 Outdoor recreation, including play areas, nature study, boating, fishing including shellfishing and marine aquaculture, and hunting where otherwise legally permitted, temporary structures relating to carnivals and recreational activities.
- 6.14.1.3 Grazing, farming, agriculture and the harvesting of crops.
- 6.14.1.4 Temporary non-residential structures used in connection with fishing, shellfishing, aquaculture, harvesting, storage or sale of products raised in the premises.
- 6.14.1.5 Dwellings, signs and parking lots lawfully existing prior to the adoption of these provisions.
- 6.14.1.6 Utility lines and facilities, and sewerage pipes installed according to plans approved by the Board of Health, the Conservation Commission and the Plumbing Inspector.
- 6.14.1.7 Boardwalks, wooden stairways, snow fences.
- 6.14.1.8 Non-Commercial signs (as permitted in the residential districts, Section 7.2 of the Wellfleet Zoning By-law) provided such uses do not affect the natural flow of any watercourse.

6.14.2 Development Regulations - The following requirements apply in the Floodplain District:

- a) In A Zones, in the absence of FEMA BFE data and floodway data, the Building Department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other credible source as the basis for requiring new construction, substantial improvements, or other development in Zone A, including but not limited to residential structures, to be elevated above base flood level, and/or for floodproofing and/or elevating nonresidential structures to or above base flood level, and

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for prohibiting encroachments in floodways. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

b) Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

c) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

d) All subdivision proposals must be designed to assure that:

- i) Such proposals minimize flood damage;
- ii) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
- iii) Adequate drainage is provided to reduce exposure to flood hazards.

e) In A1-30, AH, AE, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days. Any such recreational vehicle shall be fully licensed and highway ready.

f) Within the Floodplain District are areas designated as coastal high hazard areas (Zone VE). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wavewash, the following provision shall apply:

All new construction shall be located landward of the reach of the mean high tide.

6.14.3 To meet Minimum Lot Area requirements for uses allowed in the underlying zoning district, lots must have a contiguous Lot Area outside of the floodplain district of at least 60% (sixty percent) of the minimum Lot Area requirement, and said area must be accessible from a street or way open to public or private use. For purposes of determining Lot Coverage, the entire Lot Area shall be the basis, however, all structures and related facilities must be confined to that portion of the lot which is not swamp, pond, bog, dry bog, marsh, areas of exposed groundwater or which lies within the floodplain district.

6.14.4 To appeal the restrictions in this section, application may be made to the Wellfleet Board of Appeals for a floodplain exemption from this floodplain bylaw in accordance with the following conditions:

6.14.4.1 A determination that the granting of an exemption will not result in increased flood heights, decreased flood storage capacity, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public, or conflict with existing local laws. ATM 4/25/88

6.14.4.2 A showing of good and sufficient cause.

6.14.4.3 A determination that failure to grant the variance would result in exceptional hardship to the applicant.

6.14.4.4 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

6.14.4.5 Compliance in all respects with sections of the State Building Code (780 CMR) which address floodplain and coastal high hazard areas.

6.14.4.6 Approval of the Wellfleet Conservation Commission in accordance with G.L. c. 131, §40, the Wetlands Protection Act, and with the Town of Wellfleet's Environmental Protection Bylaw.

6.14.5 The Board of Appeals will maintain a record of all exemptions issued including justification for their issuance and report such exemptions issued in the Annual Report submitted to the Federal Insurance Administration.

6.14.6 Variances to the flood-resistant standards as found in the MA State Building Code may only be issued by the MA State Building Code Appeals Board. Upon learning that an applicant intends to file for a variance from the State Building Code Appeals Board, the Building Commissioner shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property. The letter shall include the Building Commissioner's signature and at a minimum shall state that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Commented [AW4]: Need to specify who will send the letter.

Such notification shall be maintained with the record of all variance actions for the referenced development in the Floodplain Overlay District.

Federal Emergency Management
Agency, Region I99 High Street, 6th
Floor
Boston, MA 02110